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Attorney for the Director of
Labor and Industrial Relations
State of Hawaii

2007 FEB 28 AM 10:47

HAWAII LABOR
RELATIONS BOARD

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

| | | |
|-------------------------|----------|-------------------------------|
| In the Matter of | CASE NO. | OSH 2006-19 |
| DIRECTOR, DEPARTMENT OF |) | |
| LABOR AND INDUSTRIAL |) | |
| RELATIONS, |) | DIRECTOR, DEPARTMENT OF LABOR |
| |) | AND INDUSTRIAL RELATIONS' |
| Complainant, |) | WITHDRAWAL OF CITATIONS; |
| |) | EXHIBIT A |
| vs. |) | |
| |) | |
| BEACHSIDE ROOFING LLC, |) | |
| |) | |
| Respondent. |) | |
| |) | |
| |) | |

BEACHSIDE.IC

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS'
WITHDRAWAL OF CITATIONS

WHEREAS the DIRECTOR OF LABOR AND INDUSTRIAL RELATIONS,
(Director), by his Hawaii Occupational Safety and Health
Division (HIOSH) inspected the work site of BEACHSIDE ROOFING
LLC (Respondent) located at 3136 Puaole Street, Lihue, Kauai
96766 on June 7, 2006;

WHEREAS, the Director issued a Citation and Notification of Penalty on July 19, 2006, Inspection Number 309460137 to Respondent for violations (Exhibit A):

1. Citation 1 Item 1, a Repeat violation of 29 CFR 1926.501(b)(10) failing to protect its employees engaged in roofing activities on a low-slope roof, with unprotected sides and edges 6 feet (1.8m) or more above lower levels, from falling with a guardrail system, safety net system, personal fall arrest system, or a combination of warning line system and guardrail system, warning line system and safety net system, or warning line system and personal fall arrest system, or warning line system and safety monitoring system, thus incurring a \$10,000.00 penalty.

2. 29 CFR 1926. 1053(b)(1), Citation 1 Item 2, Repeat, for failing to have the side rails of a portable ladder extend at least 3 feet above the upper landing surface; thus incurring a \$2,000.00 penalty. (Exhibit A).

NOW THEREFORE, it is stipulated and agreed by the Parties that the Citation and Notification of Penalty issued on July 19, 2006 (Inspection Number 309460137) are withdrawn in its entirety and considered null and void.

DATED: Honolulu, Hawaii, February 28, 2007.

APPROVED AS TO FORM:

BEACHSIDE ROOFING LLC.

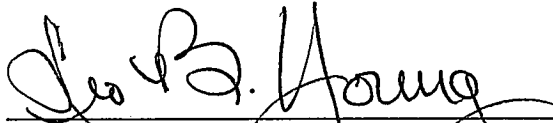
Attorney for Respondent



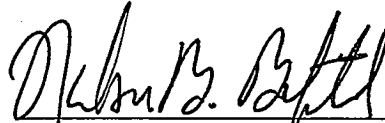
By Andrew Finn,
Project Manager

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS



Leo B. Young
Deputy Attorney General
Attorney for Director of Labor
and Industrial Relations,
State of Hawaii



NELSON B. BEFITEL

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 235



BRIAN K. NAKAMURA, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813
Phone: (808) 586-9110 FAX: (808) 586-9104



Certified Number: 7005 3110 0001 1082 0155

Citation and Notification of Penalty

To:
Beachside Roofing Llc
and its successors
1870 Leleiona St.
Lihue, HI 96766

Inspection Number: 309460137 (Ray Mishima)

Inspection Date(s): 06/07/2006 - 06/07/2006

Issuance Date: 07/19/2006

OSHA ID: Y5214

Optional Report No.: 04306

Inspection Type: Referral

Scope of Inspection: Partial Inspection

Inspection Site:
3136 Puaole St
Lihue, HI 96766

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful and Repeat** violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - you should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 07/19/2006. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 309460137
Inspection Dates: 06/07/2006 - 06/07/2006



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 07/19/2006

Citation and Notification of Penalty

Company Name: Beachside Roofing Llc
Inspection Site: 3136 Puaole St, Lihue, HI 96766

Citation 1 Item 1 Type of Violation: Repeat

29 CFR 1926.501(b)(10) [Refer to chapter 12-121.2, HAR] was violated because:

Three employees were observed working 9 feet above the lower levels without any type of fall protection. The fall to the lower levels could result in serious injuries or death.

29 CFR 1926.501(b)(10) states "Roofing work on Low-slope roofs. Except as otherwise provided in paragraph (b) of this section, each employee engaged in roofing activities on low-slope roofs, with unprotected sides and edges 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems, safety net systems, personal fall arrest systems, or a combination of warning line system and guardrail system, warning line system and safety net system, or warning line system and personal fall arrest system, or warning line system and safety monitoring system. Or, on roofs 50-feet (15.25 m) or less in width (see Appendix A to subpart M of this part), the use of a safety monitoring system alone [i.e. without the warning line system] is permitted."

Beachside Roofing LLC was previously cited for violations of this occupational safety and health standard or its equivalent standard 1926.501(b)(10) [Refer to chapter 12-121.2, HAR] which contained in HIOSH inspection number 306264375, Citation 1, Item 1 Issued December 31, 2003 which became a final order on January 1, 2004 and inspection number 307254664, Citation 1, Item 1 Issued on February 26, 2004 which became a final order on March 23, 2004.

Location: Jobsite

Abatement Documentation Required

Date By Which Violation Must be Abated:
Penalty:

07/24/2006
\$10,000.00

Citation 1 Item 2 Type of Violation: Repeat

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 309460137
Inspection Dates: 06/07/2006 - 06/07/2006



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 07/19/2006

Citation and Notification of Penalty

Company Name: Beachside Roofing LLC
Inspection Site: 3136 Puaole St, Lihue, HI 96766

Citation 1 Item 2 Type of Violation: **Repeat**

29 CFR 1926.1053(b)(1) [Refer to chapter 12-154.1, HAR] was violated because:

A 25-foot extension ladder side rails was observed with the side rails not extended 3-foot above the upper landing, the top of the ladder was also not secured at the top to a rigid support. The fall to the lower levels could result in serious injuries or death.

29 CFR 1926.1053(b)(1) states "When portable ladders are used for access to an upper landing surface, the ladder side rails shall extend at least 3 feet (.9 m) above the upper landing surface to which the ladder is used to gain access; or, when such an extension is not possible because of the ladder's length, then the ladder shall be secured at its top to a rigid support that will not deflect, and a grasping device, such as a grabrail, shall be provided to assist employees in mounting and dismounting the ladder. In no case shall the extension be such that ladder deflection under a load would, by itself, cause the ladder to slip off its support."

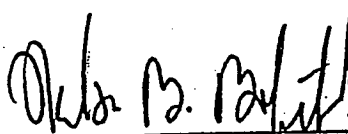
Beachside Roofing LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.1053(b)(1) [Refer to chapter 12.154.1, HAR] which is contained on HIOSH inspection number 308491042, Citation 1, Item 1 Issued on October 28, 2005 which became a final order on November 12, 2005.

Location: Jobsite

Abatement Documentation Required

Date By Which Violation Must be Abated:
Penalty:

07/24/2006
\$2,000.00


NELSON B. BERITEL
DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to: **3094601377**

**William Kindig,
Working Foreman
Beachside Roofing Inc
1870 Leleiona Street
Lihue, Hawaii 96766**

2. Article Number
(Transfer from service label)

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Ariene Gudoy ☐ Agent ☐ Addressee

B. Received by (Printed Name)
Ariene Gudoy

C. Date of Delivery
2006 JUL 24 ☐ Yes ☒ No

D. Is delivery address different from item 1?
If YES, enter delivery address below:

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☒ Yes

7005 3110 0001 1082 0155

Domestic Return Receipt

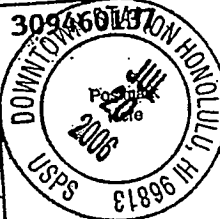
102595-02-M-1540

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Safety Postage \$ **.87**
Certified Fee **2.40**
Return Receipt Fee (Endorsement Required) **1.85**
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees \$ **5.12**



Sent To **Beachside Roofing Inc**
Street, Apt. No., or PO Box No. **1870 Leliona Street**
City, State, ZIP+4 **Lihue, Hawaii 96766**

PS Form 3800, June 2002

See Reverse for Instructions

0016

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813

SUMMARY OF PENALTIES

Company Name: Beachside Roofing Llc
Inspection Site: 3136 Puaole St
Lihue, HI 96766
Issuance Date: 07/19/2006

Summary of Penalties for Inspection Number 309460137

Citation 01, Repeat = \$12,000.00

TOTAL PENALTIES \$12,000.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.